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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

‘ĪLIO‘ULAOKALANI COALITION, a)	Civil No. 04-00502 DAE BMK
Hawai‘i nonprofit corporation; NĀ ‘IMI)	
PONO, a Hawai‘i unincorporated)	PLAINTIFFS’ RESPONSE TO
association; and KĪPUKA, a Hawai‘i)	ORDER TO SHOW CAUSE;
unincorporated association,)	[PROPOSED] JUDGMENT;
)	CERTIFICATE OF SERVICE
Plaintiffs,)	
)	
v.)	
)	
ROBERT M. GATES, Secretary of)	
Defense; and JOHN McHUGH,)	
Secretary of the United States)	
Department of the Army,*)	
)	
Defendants.)	
)	

* Pursuant to Federal Rule of Civil Procedure 25(d)(1), Secretary of the United States Department of the Army John McHugh is substituted for his predecessor, Pete Geren.

PLAINTIFFS' RESPONSE TO ORDER TO SHOW CAUSE

Plaintiffs 'Īlio'ulaokalani Coalition, Nā 'Imi Pono, and Kīpuka (collectively, "the Hawaiian Groups") have no objection to entry of judgment in this case.

In this lawsuit, the Hawaiian Groups argued that defendants violated the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. §§ 4321 et seq., when they relied on two documents to justify their decision to convert the 2nd Brigade of the 25th Infantry Division into a Stryker Brigade Combat Team in Hawai'i: the February 2002 Final Programmatic Environmental Impact Statement ("EIS") for Army Transformation ("2002 PEIS") and the May 2004 Final EIS for Transformation of the 2nd Brigade, 25th Infantry Division (Light) to a Stryker Brigade Combat Team in Hawai'i ("2004 FEIS"). See First Amended Complaint (filed Jan. 4, 2005). On October 5, 2006, the Ninth Circuit Court of Appeals resolved the parties' disputes about these documents' legality, holding that defendants' failure to consider "[t]ransformation of the 2nd Brigade outside of Hawaii ... renders the Army's EISs inadequate," and remanded for "supplemental analysis of alternative [stationing] locations in a supplemental [site-specific] EIS." 'Īlio'ulaokalani Coalition v. Rumsfeld, 464 F.3d 1083, 1101-02 (9th Cir. 2006); see also 'Īlio'ulaokalani Coalition v. Rumsfeld, No. 05-15915 (9th Cir. July 9, 2007) (denying petition for panel rehearing and for rehearing en banc). On remand, in 2008, defendants issued a new EIS and, based on that document, made a new

decision to station the 2/25th Stryker Brigade Combat Team in Hawai‘i. See 4/15/08 Notice of Record of Decision (Doc. # 255).

Since all disputes regarding the 2002 PEIS and 2004 FEIS have been resolved, entry of judgment on the Hawaiian Groups’ claims is appropriate. A proposed judgment is attached hereto for the Court’s consideration.

The Hawaiian Groups note that the adequacy of defendants’ 2008 EIS has never been litigated and respectfully submit that, in entering judgment, the Court should not – and need not – address whether defendants are now in compliance with NEPA. The 2008 EIS superseded the 2002 PEIS and 2004 FEIS as the basis of defendants’ decision to station the Stryker brigade in Hawai‘i. Accordingly, any NEPA challenge to that decision would now focus on the 2008 EIS, rather than the 2002 PEIS and 2004 FEIS, whose defects triggered the grant of interim injunctive relief. These “changed circumstances” warrant lifting the interim injunction.

Order Setting Interim Injunction at 2.

DATED: Honolulu, Hawai‘i, October 7, 2009.

EARTHJUSTICE
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By: /s/ David L. Henkin
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